

# REASONS

Against passing the BILL prepared, concerning Writs of CERTIORARI.

**I**T is alledged in the Bill, that by means of Writs of *Certiorari*, whereby Indictments, &c. are removed into the Court of Kings-Bench, Offenders escape Unprosecuted, and Unpunished, and the King loseth the Fines which would be imposed, were not such Indictments removed.

And also intended to be Enacted in the said Bill, That no *Certiorari* shall be granted but upon Motion in Court, and the Cause for granting thereof, to be specified in the Writ, and the *Certiorari* shall onely be delivered at the Quarter Sessions of the Peace in open Court, &c.

That all Indictments, &c. removed by *Certiorari*, shall be effectually prosecuted and brought to Trial or Judgment; or otherwise determined within the space of two Terms, and within the County Pallatines, within six months after the *Certiorari* returned, or else *Procedendo's ex Officio & gratis*, shall be made, and for default of making the *Procedendo's*; The Master of the Office to forfeit for the first Offence, forty pounds, and for every other such Offence one hundred pounds.

*It is humbly conceived*, That the Allegations in the Preamble of this Bill, are grounded upon a mistake; There being no delay in the proceedings against Offenders in the Court of Kings-Bench, process being duly made out, and Offenders more speedily and duly punished than at the Sessions of Peace, or any Inferior Court whatsoever: For that forthwith after every Indictment, is removed into the said Court, Process are thereupon duly made out from Term to Term against the Offenders, until they are Out-lawed, if they do not appear; If they do appear, they must plead the next Term after, or else Judgment may be entered against them: If they do plead the Prosecutor may carry it to Trial, and be allowed the third part of the Fine if they be Convicted, by vertue of a Privy Seal enrolled in Court. If the Prosecutor doth not try it, the King doth not lose his Fine, for unless the Defendant try it himself the next Assizes after his plea, or submit to a Fine, Process are duly made out until he be Out-lawed; and after the Out-lary is reversed, he must try the said Indictment, or otherwise legally discharge it.

That the King doth not lose his Fines by reason of the removal of Indictments; For that more Fines come to the Kings use imposed upon Offenders in the Kings-Bench, upon Indictments removed, then out of all the Inferior Courts, though not one Indictment of a hundred, is removed into the said Court.

*As to what is first intended to be Enacted by the said Bill*: That no *Certiorari* shall be made, but upon motion made in open Court, and delivered at the Quarter Sessions of the Peace, &c.

*It is Answered*,

That except *Certiorari's* be made in the Vacation time (without Motion in Court) Persons can have little or no benefit by them: For that the Quarter Sessions of the Peace by Law, are to be kept in the Vacation time, and before Motion can be made in Court (in Term time) for the Writ, they shall be adjudged and punisht without remedy: And besides, the great charge and trouble the persons will be put to in their Motions, &c. will prove a Remedy as bad, if not worse then the Disease. As for Example, A man may be Indicted in the beginning of a Summer Vacation, for forcible Entry or Detainer, by one who pretendeth Title to his House or Land, and turned out of Possession, and lose all his Summer profit of his Land, and can have no remedy before Michaelmas Term. Or if a man be Indicted at a Private Sessions for a forcible Entry, he shall be turned out of possession, and have no remedy, unless he can have a *Certiorarie* in the Vacation time: And further, the charge of a *Certiorari* by Motion in Court upon cause shewed, will be at least a treble charge to the Subject; Nay probably, six times more than now it is.

*As to what is next intended to be Enacted (viz.)* That all Indictments, &c. shall be prosecuted and brought to Trial within two Terms, &c. *It is Answered*, That there are no Assizes between Easter and Trinitie Term, nor between Michaelmas and Hillary Term, for Trial of such Indictments; and Process cannot be made out but from Term to Term; and if a special Plea be pleaded, it cannot come to issue, to be tried in so short a time.

*As to the last Clause in the Bill for the making out *Procedendo's ex Officio & gratis*.* *It is Answered*, That after an Indictment is returned and filed on Record in the Court of Kings-Bench, which is immediately done upon the return, it cannot be sent back by *Procedendo*; for Process are thereupon immediately made out, and the party may be Out-lawed, and no Record to warrant it. And if the Clerk of the Crown shall make *Procedendo's ex Officio & gratis*, and be at the charge of sending Messengers into the several Counties to the Justices, &c. with the Indictments; It may prove a charge greater than the benefit of his Office.

*And it is further desired to be observed*; That the issuing forth of Writ of *Certiorari*, out of the Court of Kings-Bench, for removing of Indictments, &c. from the Sessions of Peace, and other Inferior Courts, hath been always accounted an undoubted Right and Liberty, belonging unto the Subject, as their Appeal; and that no *Certiorari* is made, but by warrant from one of the Judges of the said Court; though antiently, and till of late, such Writ were made without any warrant, as commonly as Writ of *Latitat*, and such like mean process.

*That it is the undoubted Prerogative of the King*, to sue and prosecute Offenders in what Court he pleases; Especially proper in the Court of Kings-Bench, where his Learned Council most usually attend, and where onely Writs of Outlary can be made against Criminal Offenders, for want of Appearance, &c. And it is to be observed, that no Clerk of the Assize, or Clerk of the Peace, do make out Process against Offenders upon Indictments to Outlary, notwithstanding they do not appear; neither do any of the said Clerks certifie any Records of Outlary, into the Court of Kings-Bench, as by Law they ought to do: Neither can they make out Process out of their own Counties, in case the Offenders live or remove into other Counties which frequently happens; but Process out of the Kings-Bench can be made against Offenders all the Realm over.

*That for want of *Certiorari's**, The Justices of the Peace, may if they please assume an Arbitrary power whereby the people may suffer for want of their Appeal.

*That the Peers of the Realm*, and their Tenants may suffer much for want of these Writs: For though most of the Peers are in the Commissions of the Peace, yet they seldom appear at the Sessions: Besides, their Lands lie dispersed in several Counties. The Peers are like more especially to be prejudiced in case of forcible Entries, wherein Justices of the peace have power to give possession of Estates without controul, except *Certioraries* be granted as well in the Vacation, as in Term time.